

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUTHELLEN HARRIS, individually  
and as personal representative to  
ROBERT JEAN HARRIS, HEATHER  
HARRIS, JAMIE HARRIS, and GREG  
HARRIS,

No. C 10-4626 CW

PRETRIAL ORDER

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,  
WAREHOUSE DEMO SERVICES, INC.,  
CARGILL MEAT SOLUTIONS  
CORPORATION, FRESH CHOICE  
INTERNATIONAL, LLC AND DOES 1-  
100, inclusive,

Defendants.

A pretrial conference was held in the above entitled case on  
May 23, 2012. The Court ruled on the parties' motions in limine  
as follows:

Plaintiffs' Motions.

1. Granted. The decedent's tax history will be excluded as  
long as the parties can agree upon an accurate way to inform  
the jury of his earnings history for damages purposes.
2. Granted as unopposed. Evidence of the decedent's 1997  
bankruptcy is excluded.
3. Granted. The decedent's medical history is excluded, except  
to the extent that it is relevant to his life expectancy.  
Hearsay within the medical records is excluded, except to

1 the extent that it may be covered by a hearsay exception  
2 such as a statement for purposes of medical diagnosis.

3 4. Granted in part. Hearsay within hearsay contained in  
4 paramedics' and coroner's reports and the like is excluded  
5 unless a hearsay exception covers both levels of hearsay. A  
6 statement of a present sense impression may cover some of  
7 the evidence.

8 5. Granted as unopposed. Hearsay evidence of opinions of  
9 causation is excluded.

10 6. Denied. Plaintiff makes no colorable Daubert challenge to  
11 Defendant's experts.

12 Defendant's Motions.

13 1. Granted as unopposed. There will be no references to  
14 Defendant's insurance.

15 2. Granted. There does not appear to be any evidence of other  
16 lawsuits against Defendant, and if there were, it would be  
17 inadmissible unless a strong showing of relevance were made.

18 3. Granted in part. Evidence of Defendant's net worth is  
19 excluded. Evidence of its experience, types of business,  
20 and number of customers and employers may be admitted as  
21 relevant to its knowledge and intent.

22 4. Denied. Defendant makes no colorable Daubert challenge to  
23 Plaintiff's experts.

24 Discovery requests propounded after the discovery cut-off  
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1 need not be fulfilled. The proposed verdict form appears  
2 acceptable. The voir dire questions will be selected by the trial  
3 judge. Neither party intends to proffer discovery excerpts. The  
4 parties shall meet and confer in an attempt to eliminate  
5 duplicative or cumulative witnesses, and to avoid calling any  
6 witness twice. The parties shall meet and confer and attempt to  
7 provide both preliminary and final jury instructions, in order,  
8 without instructions that are unnecessary because they address  
9 matters not relevant or not in dispute, such as course and scope  
10 of employment and mitigation. Plaintiff's instruction on the  
11 limited significance of Defendant's alleged failure to follow its  
12 own procedures is correct. Such procedures do not define  
13 Defendant's duty of care and a failure to follow them is not in  
14 itself negligence, but may be evidence of negligence.  
15

16 The case shall proceed on June 18, 2012, at 8:30 a.m. to a  
17 jury trial of eight days or less before the Honorable Jacqueline  
18 S. Corley on the consent of the parties. The parties shall  
19 provide Judge Corley with their exhibit binders. This Court's  
20 pre-trial orders shall continue to apply unless Judge Corley  
21 modifies them.  
22

23 Dated:

\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

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25 cc: JSC  
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